ATTORNEY FOR APPELLANT:

ANNA CALABRESE
Cedar Lake, Indiana

ATTORNEY FOR APPELLEE:

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IN THE
COURT OF APPEALS OF INDIANA

ANNA CALABRESE,	)	
	)	
Appellant-Petitioner,	)	
	)	
vs.	)	No. 45A03-0505-CV-202
	)	
ROBERT CALABRESE,	)	
	)	
Appellee-Respondent.	)	

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable James Danikolas, Judge
Cause No. 45D03-0402-DR-113

September 20, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Petitioner, Anna Calabrese (Anna), appeals the trial court's judgment dissolving her marriage to Appellee-Respondent, Robert Calabrese (Robert).

We affirm in part, reverse in part, and remand.

ISSUES[1]

Anna raises nineteen issues on appeal, which we consolidate and restate as the following seven issues:

(1) Whether the trial court violated Anna's rights by holding the dissolution hearing when she was not represented by counsel;

(2) Whether the trial court erred in ordering Anna and Robert's son, R.C., to attend school outside the home and in refusing to admit evidence that Anna is an experienced home-schooling teacher;

(3) Whether the trial court violated Provisional Orders in its division of marital property;

(4) Whether the trial court properly ordered Robert to have supervised visitation with R.C.;

(5) Whether the trial court's award of spousal maintenance is adequate;

(6) Whether the trial court's child support order is adequate; and

[1] Anna presents a disjointed list of alleged errors and violations of by the trial court; thus, deciphering the exact issues Anna wishes to present for our review is difficult. However, we will attempt to identify the primary issues raised by Anna. Regardless, we admonish Anna to study Appellate Rule 46(A)(4), which requires that Appellant's brief contain a Statement of Issues that concisely and particularly describes each issue presented for our review.

(7) Whether the trial court properly addressed Anna's need for a life insurance policy, health insurance coverage, and reimbursement for various bills.

FACTS AND PROCEDURAL HISTORY

On October 19, 2004, the trial court entered the following findings, in pertinent part, in its Decree of Dissolution (the Decree), dissolving the marriage between Anna and Robert:[2]

> 3. That [Anna and Robert] were married on April 1, 1978. They have lived separate and apart since [March 28, 2001, and Anna] filed her petition for dissolution on August 11, 2000.
>
> 4. That during the course of these proceedings [Anna] was represented by three attorneys[,] all of who had withdrawn before final hearing. [Anna] represented herself during the final hearings.
>
> 5. That three children were born of this marriage, [M.C.,] born 7/16/80; [A.C., born] 10/31/83[,] and [R.C.], born 9/21/96. No other children were born or adopted by the parties and [Anna] is not now pregnant.
>
> 6. That irreconcilable differences have caused an irretrievable breakdown in the marriage such that it is in the best interest of the parties that they be [returned] to the status of single persons.
>
> 7. That [M.C. and A.C.] are emancipated, [M.C.] living on her own and [A.C.] living with [Robert]. The parties' minor child[, R.C.], has Downs Syndrome and is in need of special care.
>
> 8. That in May 2002 Deborah Szczepanski was appointed as Guardian Ad Litem to represent [R.C.] and has done so since that time. The appointment of the Guardian Ad Litem was to protect the best interest of the minor child in light of the allegations of [Robert] viewing child pornography. The Guardian Ad Litem reports, and the [c]ourt finds that there is no evidence that [Robert] has harmed or subjected [R.C.] to any danger. Yet, there is a concern that due to [R.C.'s] condition he would not have the mental and physical ability to report to another adult any such violation.

[2] Our recitation of the Decree includes modifications ordered by the trial court on December 7, 2004, as a result of Anna's Motion to Correct Errors filed on November 17, 2004.

9. By stipulation of the parties, [Anna] shall have sole legal and physical custody of [R.C.].

10. By further stipulation, [Robert] shall have supervised visitation. This [c]ourt finds that [Robert's] mother[, M.C., or A.C.] is an appropriate supervisor.

11. That due to [Robert's] work commitments, visitation with [R.C.] shall be two days per week for a period of 5 hours each day. There shall be no overnight visitation until further order of court. [Robert] shall have first right to choose the dates and times as long as he provides [Anna] with written notification of his choices by 5:00 p.m. each Sunday. If he has not provided the written notification by that time, [Anna] may make plans for herself and her son[,] and [Robert's] visitation shall be arranged around her plans.

12. That by stipulation of the parties this [c]ourt adopts the Guardian Ad Litem's [(GAL)] further terms and conditions of [Robert's] visitation[,] those being:

a. that [Robert] shall submit to an evaluation regarding his propensity of viewing child pornography and whether his behavior represents a threat to [R.C.] or other children; and

b. that the evaluation shall be conducted by an expert approved by the GAL to ensure appropriate qualifications for making such a determination; and

c. that [Robert] cooperates and participates in any therapy recommended by this expert regarding this inappropriate behavior.

13. That at the time of the filing of the dissolution, the parties jointly owned the following marital assets:

a. Marital residence
   11202 Parish Avenue
   Cedar Lake, Indiana
   No lien or mortgage
   [Value = $119,000]

b. 100 S. Williams and

110 S. Williams
Thornton, Illinois
[Value = $39,164.75]

* * *

15. That during the course of the marriage, since approximately 1987, the parties jointly owned and operated a corporation known as Liberty Electronics, Inc. Further, that this business was the primary source of income for the family.

16. That during the proceedings, [Robert] was given the exclusive right to operate this business along with the provisional obligation of paying all the marital debts and expenses.

17. That from the year 2000 to 2003 the profits from the business decreased to the point that [Robert] ceased all operations.

18. That at the time the business was closed it had little assets other than equipment and supplies[,] which have since been turned over to [Anna]. The corporation had approximately $22,800.00 of debt, which [Robert] has agreed to assume.

19. That the evidence supports [Robert's] contentions that the economic conditions contributed to the decline in the profitability of the business. Further, although [Robert's] bookkeeping practices were sloppy, there is insufficient evidence to find that [Robert] intentionally caused the business to fail. Nor does the evidence support [Anna's] contention that [Robert] dissipated marital assets.

20. In approximately 2003 [Robert] began a new career in real estate sales. His income history is insufficient to determine a gross weekly income to attribute to [Robert]. [Robert] anticipates income of $30,000.00 to $40,000.00 in 2004.

21. That throughout the marriage, [Anna's] primary focus was maintaining the family residence and she was the primary caretaker of the three children. She also took a very active role in the children's education in that she [home-schooled M.C. and A.C.].

22. That [Anna] has not worked outside the home since [M.C.] was born except for the assistance she gave to [Robert] at the family business. In light of her work experience and the special needs of [R.C.] it is unlikely

that [Anna] will be able to immediately obtain full time employment [] sufficient to support herself and [R.C.]. Support will be required from [Robert] until [Anna] has had the opportunity to establish a routine for [R.C.] and to obtain employment herself. For all the reasons state above, there is sufficient evidence to support a deviation from the presumed equal division of marital assets and debts.

23. That during the course of these proceedings, [Anna] filed a number of contempt petitions (all filed on December 12, 2003) alleging that [Robert] damaged the business and or inappropriately used rental property income to the detriment of the business. The [c]ourt finds that [Robert] did conceal from or fail to provide [Anna] accurate records regarding the business and rental income. And further he inappropriately attempted to remove [Anna's] name from a joint business account and attempted to remove her as an officer of the corporation. Therefore, Contempt is GRANTED.

24. That as and for his contempt, [Robert] shall be solely responsible for the remaining business debt of $22,800.00, which includes but is not limited to any and all Federal, State[,] and local sales or income tax relating to the business.

25. That the parties had credit card debt of approximately $13,000.00. . . . By stipulation of the parties, [Robert] shall assume and hold [Anna] harmless of all liability relating to the payment of these debts.

26. That at the time of filing, [Robert] had a term life insurance policy valued at $285,000.00. As of the date of this order it is unclear whether this policy still exists. In light of the needs of [R.C.], [Robert] shall maintain a life insurance policy on his own life for the sum of no less than $200,000.00 payable upon his death, in trust for the benefit of [R.C.].

27. That as of the date of the final hearings [Robert] was current in support, and the payment of household expenses. Further, [Robert] should be responsible for the provisional obligations up to the date of this decree.

* * *

33. That the [c]ourt agrees with the [GAL's] recommendation that [R.C.] not be home schooled and that he should attend a program approved by the [GAL] and the parties. Further that despite his supervised visitations, [Robert] shall have access to school and medical records and have the right to speak to [R.C.'s] teachers[,] counselors[,] and medical providers.

34. That it is in the best interest of [R.C.] that Deborah Szczepanski remain as the [GAL] for [R.C.]. That the parties shall be responsible for the [GAL] fees with [Anna] paying 24% of her fee and [Robert] 76%.

(Appellant's App. Volume 9, pp. 1- 5).

Thereafter, the trial court ordered, in pertinent part:

* * *

D. That [Robert] shall pay child support to [Anna] in the sum of $105.00 per week through a wage withholding paid to the clerk of the court. This child support order shall be retroactive to the date of this Decree. In light of [Robert's] new career path, he shall provide to [Anna] all W-2's, 1099's or other accountings of income for the previous year, no later than February 15 of each year.

* * *

F. [Anna] shall be responsible for the first $430.50 of uninsured medical expense per year based on the figures in the attached child support worksheet . . . [Anna] shall be responsible for 24% and [Robert] 76% of the remaining uninsured medical [costs] per year for [R.C.]. [Robert] shall maintain health insurance on [R.C.] unless [R.C.] qualifies for medical coverage from the government.

G. . . . The parties shall share the expense of [the education program R.C. attends] with [Anna] contributing 24% and [Robert] contributing 76%.

* * *

I. The parties shall maintain joint ownership of the marital residence located at 11202 Parish Avenue in Cedar Lake, Indiana. [Anna] shall have exclusive use and possession of this residence until the first of the following events:

1. [Anna] remarries;
2. [R.C.] reaches 18 years of age; or
3. [Anna] chooses to relocate.

Upon the earliest of any of these events, the house shall be placed on the market for immediate sale. Upon the sale of the property the parties shall equally share in the net equity.

> J. That during the time [Anna] resides in the marital residence, [Robert] shall, as and for spousal support, pay the utilities for a period of 6 months from the entry of this Decree. Thereafter, [Anna] shall be responsible for her own utilities.
>
> K. That further, [Robert] shall be responsible for the insurance and real estate taxes for said real property through the year 2005. Thereafter the parties shall divide the real estate taxes and insurance equally.
>
> * * *
>
> M. That net proceeds from the Illinois properties, $39,164.75, shall be divided equally between the parties. . . .

(Appellant's App. Volume 9, pp. 6-7).

On November 17, 2004, Anna filed a Motion to Correct Errors. On the same date, Robert filed a Motion for Nunc Pro Tunc Amendment of the Decree. On December 6, 2004, the trial court held a hearing on the pending motions. In an Order issued on December 7, 2004, the trial court granted in part and denied in part Anna's Motion to Correct Errors, and denied Robert's Motion for Nunc Pro Tunc Amendment of the Decree. In addition to the Decree's modifications included in our recitation above, the trial court ordered:

> c. [Anna] shall be awarded the two Chapel Lawn Cemetery Lots for herself and for [R.C.].
>
> d. [Anna] shall be awarded any and all funds in the Charles Schwab account jointly held by the parties if it exists. Both parties admitting they have no knowledge as to whether the account was still in existence at the time of this hearing or the final hearing.
>
> e. [Anna] shall be awarded any and all funds in [Robert's] Charles Schwab IRA. Both parties admit[ed] they have no knowledge as to whether the account was still in existence at the time of this hearing or the final hearing.

(Appellant's App. Volume 9 pp. 17-18).

On March 7, 2005, Anna filed several motions with the trial court, including: Motion For Production of Life Insurance Policy and Trust Documents, Motion for Contempt for Nonpayment of Child Support, Motion for Contempt for Nonpayment of Monthly Money and Interest, Motion for Contempt For Nonpayment of Taxes, and Motion for Increase in Child Support. On May 31, 2005, the trial court held a hearing on the pending motions, and took each matter under advisement. However, it appears from the record that Anna was also pursuing her appeal during this time, as her Notice of Appeal was filed on January 4, 2005; thus, it does not appear from the record that the trial court responded to the motions argued at the aforementioned hearing.

Additionally, on January 4, 2005, upon filing her Notice of Appeal, Anna also filed a Motion to Proceed on Appeal in Forma Pauperis with the trial court, which the trial court denied on January 6, 2005. Subsequently, on May 2, 2005, Anna filed the same motion with this court, which we denied on May 12, 2005.

Anna now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION[3]

Anna disputes the trial court's findings and judgment contained within the Decree dissolving her marriage to Robert. In doing so, Anna points to nineteen separate errors by the trial court. However, it is well settled that the duty of presenting a record adequate for intelligent appellate review on points assigned as error falls upon the appellant, as

[3] In developing our Discussion and Decision, we do not have a transcript of the dissolution hearing available for our reference. Rather, Anna elected to submit a Statement of Evidence pursuant to Ind. Appellate Rule 31, which was certified by the trial court.

does the obligation to support the argument presented with authority and references to the record pursuant to Ind. Appellate Rule 46(A)(8). Examination of Anna's lengthy brief reveals a lack of cogent reasoning, and primarily amounts to nothing more than mere rambling allegations. *See* App. R. 46(A)(8)(a); *see also AutoXchange.com, Inc. v. Dreyer and Reinbold, Inc.*, 816 N.E.2d 40, 45 (Ind. Ct. App. 2004). Accordingly, we have the authority to waive Anna's entire argument. *See id*. However, waiver notwithstanding, we will attempt to address the merits of Anna's better-articulated claims.

I. *Standard of Review*[4]

When a trial court enters findings of fact and conclusions of law *sua sponte*, as the trial court did in this case, the specific findings control only as to the issues they cover, while a general judgment standard applies to any issue upon which the court has not found. *Dewbrew v. Dewbrew*, 849 N.E.2d 636, 640 (Ind. Ct. App. 2006). In reviewing the judgment, this court must determine whether the evidence supports the findings and whether the findings, in turn, support the judgment. *Id*. We will reverse a judgment only when it is shown to be clearly erroneous, "*i.e.*, when the judgment is unsupported by the findings of fact and conclusions entered on the findings." *Id*. (quoting *Scoleri v. Scoleri*, 766 N.E.2d 1211, 1215 (Ind. Ct. App. 2002)). For findings of fact to be clearly erroneous, the record must lack probative evidence or reasonable inferences from the evidence to support them. *Dewbrew*, 849 N.E.2d at 640. A judgment is clearly erroneous if it applies the wrong legal standard to properly found facts. *Id*. To determine

[4] Anna offers no statement of the applicable standard of review for any issue she raises. Failing to include a standard of review violates Ind. Appellate Rule 46(A)(8)(b).

that a finding or judgment is clearly erroneous, an appellate court's review of the evidence must leave it with the firm conviction that a mistake has been made. *Id.* In determining the validity of the findings or judgment, we consider only the evidence favorable to the judgment and all reasonable inferences to be drawn therefrom, and we will not reweigh the evidence or assess the credibility of witnesses. *Id.*

II. Lack of Legal Representation

First, Anna argues that the trial court erred in conducting the dissolution hearing when she was without legal counsel. Specifically, Anna contends that the trial court showed bias in favor of Robert because Robert had legal representation during the proceedings. In our review, we find that Anna has failed to support this claim to such a degree that we are unable to respond to the argument. As previously mentioned, Indiana Appellate Rule 46(A)(8)(a) requires that the arguments laid out in Appellant's brief be supported by citations to the authorities, statutes, and Appendix or parts of the Record on Appeal relied on. Anna's brief does not contain a single citation in support of this contention, and thus we hold this argument has been waived.

Nevertheless, in addressing the argument on its merits, we note that our review of the record shows that Anna was represented by three separate attorneys during a portion of the proceedings, but each of these attorneys withdrew from representing her before the final dissolution hearing. In addition, the record fails to disclose that Anna applied to the trial court for leave to proceed as an indigent person, as is required to begin the procedure for appointing civil counsel, prior to the dissolution hearing. *See* I.C. § 34-10-1-2; *see also Sabo v. Sabo*, 812 N.E.2d 238, 243 (Ind. Ct. App. 2004). It is statutorily mandated

that a party can only be appointed civil counsel if after applying for leave to proceed as an indigent person, the trial court determines the applicant is indigent and is without sufficient means to litigate the action. *Id*. Moreover, our review of the record shows that in the trial court's order denying Anna's Motion to Proceed on Appeal in Forma Pauperis, it was determined that Anna was not indigent. Rather, the trial court concluded she was capable of seeking employment and has sufficient funds to hire an attorney. Therefore, we conclude that even if Anna had adequately supported this contention, it would have nonetheless failed.

III. *R.C.'s Education*[5]

Second, we address Anna's argument that the trial court erred in ordering her to enroll R.C. in an educational program outside the home, approved by the Guardian Ad Litem, as well as both parties. Specifically, Anna contends that under I.C. § 31-17-2-17, as R.C.'s custodial parent, she has the right to make all decisions regarding R.C.'s education. By taking away her right to home school R.C., Anna asserts that the trial court is violating her constitutional right to privacy. Related to this issue, Anna also claims that the trial court improperly refused to allow her to admit evidence that she is an experienced home-schooling provider.

A. *Anna's Right to Home School R.C.*

As a general matter, we acknowledge that "[p]arents have a constitutionally recognized fundamental right to control the upbringing, education, and religious training

[5] Robert notes that this issue may become moot following the trial court's hearing on his Petition for Change of Custody of R.C., which was scheduled for May 31, 2006. As we are unaware of the outcome of this hearing, we choose to go forth with addressing Anna's contentions related to R.C.

of their children." *Jones v. Jones*, 832 N.E.2d 1057, 1059 (Ind. Ct. App. 2005). However, in accordance with our longstanding policy of judicial restraint in constitutional matters, this court must refrain from deciding constitutional questions when non-constitutional grounds present themselves for resolving the case under consideration. *Id.*

It is well established that the trial court has statutory authority to determine custody and enter a custody order in accordance with the best interests of the child. *See* I.C. § 31-17-2-8. Further, in determining the best interests of the child, the trial court shall consider all relevant factors, including the age and sex of the child, the child's adjustment to the child's home, school, and community, and the mental and physical health of all individuals involved. *See id*. Here, Anna does not challenge the trial court's custody determination, as it was stipulated that she would have sole physical and legal custody of R.C. Rather, Anna challenges the trial court's imposition of a requirement in the Decree that R.C. attend an educational program outside the home.

In her argument, Anna relies on Indiana Code § 31-17-2-17, which provides:

> (a) Except:
>
> (1) as otherwise agreed by the parties in writing at the time of the custody order; and
>
> (2) as provided in subsection (b);
>
> the custodian may determine the child's upbringing, including the child's education, health care, and religious training.
>
> (b) If the court finds after motion by a noncustodial parent that, in the absence of a specific limitations of the custodian's authority, the child's:

(1) physical health would be endangered; or

(2) emotional health would be significantly impaired;

the court may specifically limit the custodian's authority.

Thus, the statute expressly reserves for the custodial parent the authority to determine the child's upbringing, which includes education, unless otherwise agreed by the parties in writing at the time of the custody hearing. I.C. § 31-17-2-17. The statute also provides a mechanism for limiting the custodial parent's authority in this regard – following motion by the noncustodial parent, the trial court may limit the custodial parent's authority if the trial court finds that the absence of a specific limitation would endanger the child's physical health or significantly impair the child's emotional development. *See id*.; *see also Clark v. Madden*, 725 N.E.2d 100, 105 (Ind. Ct. App. 2000) (finding that it was impermissible for the trial court to place a restriction on the custodial parent without a specific finding that the child would be endangered absent the restriction).

In the instant case, the record reveals that the Guardian Ad Litem, Deborah Szczepanksi (GAL), testified that Anna and Robert had successfully home schooled their two older children, and that Anna wished to also home school R.C.. However, Robert objected to Anna's request to home school R.C., expressing concerns about R.C.'s development. In particular, Robert argued that it would be difficult for Anna to home school R.C. alone, and that the home schooling of A.C. and M.C. was a success because both he and Anna participated and contributed to their lessons. Furthermore, the record indicates that Robert expressed a concern that Anna was too involved in various lawsuits

to devote a sufficient amount of time to R.C.'s education. Additionally, the Statement of Evidence shows that A.C. testified at the dissolution hearing that when she and her sister were home schooled, Robert and Anna kept them on a strict schedule every day, but that she had not seen the same type of structure and routine used in home schooling R.C.

As a result of Robert's objections, the trial court ordered an educational evaluation of R.C. Accordingly, a professional from the Association of Clinical Psychology evaluated R.C. and determined he was functioning at a low level. Anna then had R.C. re-evaluated by another professional, who reached the same determination. At the dissolution hearing, the record reveals that the GAL testified that R.C. has a significant speech impediment. Based on these evaluations, the GAL, while testifying, recommended that R.C. participate in speech therapy and a structured developmental disability program outside the home. Further, the record indicates that the GAL made this recommendation because she believed a structured educational routine outside of the home would better identify R.C.'s weaknesses and more efficiently monitor his progress. Additionally, the GAL testified that R.C.'s schooling would be positive in that his absence from the home would give Anna a few hours each day to herself to attend to her own personal needs.

In crafting a custody order, whether in dissolution or paternity proceedings, the paramount concern is the best interest of the child. *Sills v. Irelan*, 663 N.E.2d 1210, 1213 (Ind. Ct. App. 1996). Even though it has previously been held that trial courts cannot base a modification of custody solely upon religious or educational grounds because those matters are generally left to the discretion of the custodial parent, such matters may

be considered as part of a best interest determination. *Winkler v. Winkler*, 689 N.E.2d 447, 450 (Ind. Ct. App. 1997), *reh'g denied, trans. denied*. As we stated earlier in this opinion, the trial court has statutory authority to develop a custody order that is in accordance with the best interest of the child. *Jones*, 832 N.E.2d at 1059. Specifically, Ind. Code § 31-17-2-8 directs trial courts to consider all relevant factors, including the age and sex of the child, the child's adjustment to the child's home, school, and community, and the mental and physical health of all individuals involved when determining what is in the best interest of the child. We also note that in answering questions pertaining to legal custody of a child, the welfare of the child, not the wishes and desires of the parents, is the primary concern of the courts. *Carmichael v. Siegel*, 754 N.E.2d 619, 635 (Ind. Ct. App. 2001).

In *Winkler*, upon dissolution of the parties' marriage, the trial court awarded custody of the two children, one who was deaf and one who was hard of hearing, to Mother. *Winkler*, 689 N.E.2d at 448. A few years later, after numerous hearings and significant evidence, the trial court determined there had been a substantial change in circumstances since the original award, and that it was in the children's best interest that Father be given custody. *Id*. In support of its determination, the trial court issued several findings, one of which was that both children had special needs with regard to their educational, social, and emotional needs, and that Father was in the best position to facilitate these needs. *Id*. Additionally, the trial court found that both children should be placed in a regular school with an established program for students with hearing impairment. *Id*.

Mother appealed the change of custody, arguing that the trial court erred when it took education issues into consideration. *Id*. at 450. Specifically, Mother contended that educational decisions were solely the decision of the custodial parent, not the trial court. *Id*. However, we held that the consideration of matters such as education were permissible in a best interests determination. *Id*. We believe the same principle applies in the case before us.

Although there was no custody dispute between Anna and Robert at the time the Decree was entered, the trial court has discretion to enter a custody order with requirements that are in accordance with the best interests of the child. *See* I.C. § 31-17-2-8. Not only one, but two separate evaluations by psychologists, indicate that R.C. is functioning below normal for a Downs Syndrome child his age. While the trial court did not specifically state that home schooling R.C. would pose a threat to his emotional well-being, our review of the record supports an inference that R.C. is already suffering due to a lack of appropriate education. *See Jones*, 832 N.E.2d at 1060. With evidence in the record to support a finding that R.C. is developmentally lagging, we believe time is of the essence. Thus, we refuse to require any additional showing that R.C. is endangered, and we decline the invitation to go against the recommendation of two psychologists, the GAL, and the trial court. Therefore, we uphold the restriction included within trial court's custody order, requiring Anna to enroll R.C. in an educational program outside the home, approved by the GAL and both parties.

B. *Exclusion of Evidence*

Furthermore, we conclude that there was no error made by the trial court in regard to Anna's request to admit evidence that she was an experienced home school provider. We review a trial court's decision to admit or exclude evidence for an abuse of discretion. *Sullivan Builders & Design, Inc. v. Home Lumber of New Haven, Inc.*, 834 N.E.2d 129, 133 (Ind. Ct. App. 2005), *reh'g denied, trans. denied*. Here, there is no evidence to support that excluding this evidence was clearly against the logic and effect of the circumstances before the trial court. *See id*. Foremost, we cannot find any indication in the record before us that Anna even proffered such additional evidence. *See* Ind. Evid. R. 103(a). Second, as Robert points out, no one disputed the fact that Anna had experience in home schooling. Both the GAL and Robert testified at the dissolution hearing that Anna and Robert successfully home schooled M.C. and A.C.. Therefore, because the trial court already had such evidence before it, Anna's substantial rights were not impacted by the exclusion of additional evidence of her home schooling abilities. *See* Ind. Evid. R. 103(a).

IV. *Division of Marital Property / "Violation" of Provisional Orders*

Anna also argues that the trial court improperly divided the marital property. Specifically, Anna is asking this court to reverse the trial court's grant of one half of the value of the marital residence to Robert upon its sale. Anna contends that the trial court should have awarded her the entire value of the marital residence as a result of the trial court's violation of Provisional Orders issued on March 1, 2001.

We first note that the disposition of marital assets is within the sound discretion of the trial court. *Bizik v. Bizik*, 753 N.E.2d 762, 766 (Ind. Ct. App. 2001), *trans. denied*.

"When a party challenges the trial court's division of marital property, he must overcome a strong presumption that the court considered and complied with the applicable statute, and that presumption is one of the strongest presumptions applicable to our consideration on appeal." *Id*. (quoting *In re Marriage of Bartley*, 712 N.E.2d 537, 542 (Ind. Ct. App. 1999)). In reviewing a trial court's disposition of the marital assets, we focus on "what the court did, not what it could have done." *Bizik*, 753 N.E.2d at 766 (quoting *Chase v. Chase*, 690 N.E.2d 753, 756 (Ind. Ct. App. 1998)). Therefore, we review a claim that the trial court improperly divided marital property for an abuse of discretion. *Bizik*, 753 N.E.2d at 766. An abuse of discretion occurs if the trial court's decision is clearly against the logic and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions to be drawn therefrom. *Id*. An abuse of discretion also occurs when the trial court has misinterpreted the law or disregards evidence of factors listed in the controlling statute. *Id*.

Here, the trial court ordered Robert and Anna to jointly own the marital residence, but for Anna to have exclusive use of the residence until she remarries, chooses to move, or R.C. reaches 18 years of age. Upon the occurrence of any of these events, the residence is to be put on the market for sale, with the proceeds split equally between the parties. Anna disagrees with this division, citing the trial court's violation of its own Provisional Orders, which substantially maintained the status quo of the parties during the dissolution, including allowing Anna to continue to home school R.C.[6] and allowing

[6] We note that while the Provisional Orders allowed Anna to continue home schooling R.C., the record reveals that the trial court issued an Amended Order on August 5, 2004, stating that "[i]t is in the best interest of [R.C.] to attend

the parties to maintain the business, Liberty Electronics, as they had in the past. Additionally, Anna categorizes a number of other differences between the Provisional Orders and the Decree as "violations" of the Provisional Orders, and requests Robert's half of the value of the marital residence as compensation for these errors.

Indiana Code section 31-15-4-14 states, in pertinent part, that a provisional order terminates when the final decree is entered or the petition for dissolution is dismissed. *See also Trent v. Trent*, 829 N.E.2d 81, 85 (Ind. Ct. App. 2005). Thus, Anna's argument that she is owed Robert's half of the marital residence because the trial court violated various parts of its Provisional Orders fails entirely. Once the Decree was entered, the Provisional Orders ceased to have any effect. *See id*. Therefore, we conclude that the trial court did not abuse its discretion in ordering Anna and Robert to split the proceeds from the sale of the marital residence, whenever it may be sold.[7]

V. *Supervised Visitation Between Robert and R.C.*

We next address Anna's contention that the trial court erred in granting Robert supervised visitation with R.C. Specifically, Anna asserts that Robert's supervised visitation with R.C. should have been restricted to only occur in public places.

Upon review of a trial court's determination of a visitation issue, we will grant latitude and deference to our trial courts, reversing only when the trial court manifestly abuses its discretion. *Duncan v. Duncan*, 843 N.E.2d 966, 969 (Ind. Ct. App. 2006),

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a formal, full-time educational institution, at either a public or private school, and not to be home schooled by either party." (Appellant's App. Volume 9, p. 13).

[7] As Anna presents the same logic for her next argument – *i.e.* that the trial court violated its Provisional Orders in the Decree when it failed to identify Liberty Electronics as a marital asset – we find this contention also fails. *See Trent*, 829 N.E.2d at 85.

trans. denied. No abuse of discretion occurs if there is a rational basis in the record supporting the trial court's determination. *Id*. On appeal, it is not enough that the evidence might support some other conclusion, but it must positively require the conclusion contended for by appellant before there is a basis for reversal. *Id*. In all visitation issues, courts are required to give foremost consideration to the best interests of the child. *Id*.

Indiana has long recognized that the rights of parents to visit their children is a precious privilege that should be enjoyed by noncustodial parents. *Id*. As a result, a noncustodial parent is usually entitled to reasonable visitation rights. *Id*. A parent's visitation rights are only to be restricted when the court finds that "the visitation might endanger the child's physical health or significantly impair the child's emotional development." *Id*. (quoting I.C. § 31-17-4-2).

In the present case, Anna argues that Robert's supervised visitation with R.C. should not occur in any private residence, but rather in a public place, because Robert's history of viewing child pornography on the Internet poses a danger to R.C.. However, our review of the record discloses that Anna's child pornography allegations against Robert have not been substantiated. Instead, the record reveals that Robert cooperated with a request by the GAL to be evaluated by a doctor regarding this alleged inappropriate behavior, but that the doctor would not submit a report to the trial court until he also met with R.C.. Anna refused to allow R.C. to attend any of the appointments, and thus no report has been issued. At the dissolution hearing, the GAL testified that there is thus far no evidence that Robert has harmed or subjected R.C. to any

danger. Nonetheless, in the Decree, the trial court ordered Robert's visitation with R.C. to be supervised by another family member, either Robert's mother or one of the parties' other children, until Robert's propensity for viewing child pornography is completely assessed. The Decree also indicates that the parties stipulated to this arrangement. *See In re Adoption of B.C.S.*, 793 N.E.2d 1054 (Ind. Ct. App. 2003) (a party may not appeal invited error). Therefore, we find no evidence in the record that would lead us to further restrict Robert's visitation with R.C.

Anna additionally contends that the GAL's services are no longer needed in this case. We disagree. The record indicates that the GAL was brought into the proceedings following Anna's accusations that she observed Robert viewing child pornography. As previously stated, the evaluation of Robert's propensity to view child pornography has not been completed. Anna provides no valid reason for us to displace the GAL. Therefore, we conclude that the trial court did not err in ordering the GAL to maintain her role, which is that of representing and protecting R.C.'s best interests by researching, examining, advocating, facilitating, and monitoring his situation. *See id*. at 1061.

VI. *Spousal Maintenance*

Anna contends that the trial court's award of spousal maintenance in the Decree is inadequate. Specifically, Anna argues that due to her lack of work experience and R.C.'s special needs, she is unable to obtain full-time employment; consequently, she needs additional spousal maintenance from Robert.

The circumstances under which a trial court may order spousal maintenance payments are limited. *In re Marriage of Erwin*, 840 N.E.2d 385 (Ind. Ct. App. 2006).

Anna claims that the trial court should have awarded her maintenance under I.C. § 31-15-7-2(2), which provides:

> (2) If the court finds that:
>
> (A) a spouse lacks sufficient property, including marital property apportioned to the spouse to provide for the spouse's needs; and
>
> (B) the spouse is the custodian of a child whose physical or mental incapacity requires the custodian to forgo employment;
>
> the court may find that maintenance is necessary for the spouse in an amount and for a period of time that the court considers appropriate.

Additionally, we find I.C. § 31-15-7-2(3) pertinent in this case. This provision states:

> (3) After considering:
>
> (A) the educational level of each spouse at the time of marriage and at the time the action is commenced;
>
> (B) whether an interruption in the education, training, or employment of a spouse who is seeking maintenance occurred during the marriage as a result of homemaking or child care responsibilities, or both;
>
> (C) the earning capacity of each spouse, including educational background, training, employment skills, work experience, and length of presence in or absence from the job market; and
>
> (D) the time and expense necessary to acquire sufficient education or training to enable the spouse who is seeking maintenance to find appropriate employment;
>
> a court may find that rehabilitative maintenance for the spouse seeking maintenance is necessary in an amount and for a period of time that the court considers appropriate, but not to exceed three (3) years from the date of the final decree.

In the present case, our review of the record discloses that the trial court, in the Decree, acknowledged that throughout the marriage Anna's primary focus was

maintaining the family residence and caring for the children. Further, the trial court recognized that Anna has not worked outside the home since the oldest child was born and that the special needs of R.C. make it unlikely that she will be able to immediately obtain employment sufficient to support herself and R.C. Therefore, the trial court stated that the facts in this case supported a deviation from the presumed equal division of marital assets and debts. Accordingly, the trial court ordered Robert to assume the entirety of the business and marital debt, the cost of real estate taxes and insurance on the marital residence through 2005, and a majority of the GAL's fees. In addition, the trial court awarded Anna the balance of the proceeds from the sale of the parties' properties in Illinois, and further ordered Robert to pay Anna a sum of $6,644.77 plus 8% interest, to be paid in full by the time the marital residence is sold. However, as for spousal maintenance, the trial court only ordered Robert to pay the marital residence's utilities for six months.

In light of the recognized facts of this case, *i.e.* Anna's absence from the workforce for more than 26 years and the demands on her in caring for R.C., we conclude that the trial court should have ordered rehabilitative maintenance beyond the order to pay six months of the marital residence's utilities. Such maintenance, to be awarded for no more than three years, will provide support to Anna while she acquires sufficient skills to get an appropriate job. *See Brinkmann v. Brinkmann*, 772 N.E.2d 441, 445 (Ind. Ct. App. 2002). Accordingly, we remand the issue of spousal maintenance to the trial court for determination.

VII. *Child Support*[8]

Anna also disputes the trial court's order of child support for R.C., again claiming that it is inadequate. As support for this contention, Anna lays out an argument nearly identical to that laid out in support of increasing her spousal maintenance award – mainly, that because she has never worked outside the home, she deserves a larger child support award for R.C.. We disagree.

Trial courts are vested with broad discretion in ruling on child support. *Carter v. Dayhuff*, 829 N.E.2d 560, 568 (Ind. Ct. App. 2005). Child support calculations are made utilizing the income shares model set forth in the Indiana Child Support Guidelines (the Guidelines). *Nienaber v. Marriage of Nienaber*, 787 N.E.2d 450, 456 (Ind. Ct. App. 2003). The Guidelines apportion the cost of children between the parents according to their means. *Id*. This approach is based on the premise that children should receive the same portion of parental income after a dissolution that they would have received if the family remained intact. *Id*. A calculation of child support under the Guidelines is presumed to be valid. *Id*. We will not reverse a support order unless the determination is clearly against the logic and effect of the facts and circumstances. *Id*. We confine our review to the evidence and reasonable inferences favorable to the judgment. *Id*.

In the case before us, a review of Robert's annual adjusted gross income from 2000 to 2003 shows a range between $297.00 and $45,716.00. At the dissolution hearing, Robert testified that he expected to earn between $35,000.00 and $40,000.00 as a

[8] While the trial court indicates it attached a Child Support Worksheet to the Decree, it appears that neither Anna nor Robert included a copy of the Worksheet in the Record on Appeal.

realtor in 2004, plus an additional $2,400.00 for sitting on the Hanover Township Board. In the Decree, the trial court ordered Robert to pay Anna $105.00 per week in child support, an amount that corresponds to a combined adjusted weekly income of $610.00, or an annual income of approximately $31,000.00, under the Guidelines Schedule for Weekly Support. If Robert in fact earns around $40,000.00 a year, his weekly income will be approximately $769.00, which would put his weekly support obligation between $123.00 and $125.00 per week under the Guidelines Schedule for Weekly Support Payments. However, we have directed trial courts to "avoid the pitfall of blind adherence to the [Guidelines'] computation for support without giving careful consideration to the variables that require changing the result in order to do justice" in certain circumstances. *See Eppler v. Eppler*, 837 N.E.2d 167, 174-75 (Ind. Ct. App. 2005), *trans. denied*. Erring on the side of caution, the Decree indicates that the trial court estimated Robert's income in 2004 would be closer to $30,000.00. Thus, we conclude that weekly support of $105.00 is adequate. Therefore, in light of Robert's inconsistent income over the past few years, as well as our advice to trial courts that the Guidelines are not "immutable, black letter law," we conclude that the trial court's child support order does not constitute an abuse of its discretion. *See id*. at 174.

VIII. *Life Insurance, Health Insurance, and Miscellaneous Bills*

A portion of the remainder of Anna's arguments request that we award her Robert's half of the marital residence as compensation for: (1) the trial court's failure to

address Anna's life insurance and health insurance needs; and (2) Robert's failure to reimburse her for various bills, including medical and dental bills for R.C.[9]

Our review of the record shows that while the trial court ordered Robert to maintain a life insurance policy on his own life for the benefit of R.C., the Decree does not require Robert to maintain such a policy on Anna's life, despite the fact that he did so during the marriage. However, we note that it is not unusual for a trial court in a dissolution proceeding to order only the non-custodial parent to obtain life insurance for the child's benefit, as doing so is a way to ensure that future support is available for the child in the event that the non-custodial parent dies. *See Capehart v. Capehart*, 705 N.E.2d 533, 538 (Ind. Ct. App. 1999), *reh'g denied, trans. denied*. Thus, a life insurance policy acts as a substitute source of child support under circumstances where the parent ordered to pay child support is no longer alive and able to produce income or support payments. Accordingly, we cannot hold that the trial court erred in not obligating Robert to provide a life insurance policy on Anna's life.

As Anna offers no legal support for her argument that the trial court erred in not ordering Robert to provide her with health insurance coverage, we consider this issue waived for our review.[10] *See* Ind. Appellate Rule 46(A)(8). Nevertheless, we note that considerations such as the need for health insurance are often figured into a trial court's calculation of spousal maintenance. *See Thompson v. Thompson*, 811 N.E.2d 888, 908-

[9] Anna's brief then closes with three final requests to change certain language in the Decree. Our review of the record leads us to conclude that none of the alterations in semantics suggested by Anna impact the effect of the Decree. Accordingly, we decline to acquiesce to her requests for these grammatical changes.

[10] Anna does cite the trial court's failure to order Robert to provide health insurance coverage for her as a violation of the Provisional Orders. Yet, as mentioned previously, provisional orders have no effect following the issuance of a dissolution decree. *See Trent*, 829 N.E.2d at 85.

09 (Ind. Ct. App. 2004), *reh'g denied, trans. denied*; *see also Erwin*, 840 N.E.2d at 392 (when ex-spouse finds employment that meets her needs, termination of maintenance may be appropriate). Thus, when Anna's spousal maintenance award is recalculated upon remand, her lack of health insurance may be considered in determining the amount, as such insurance is a component related to her ability to support herself. *See* I.C. § 35-15-7-2.

In regard to Anna's allegation that Robert violated previous orders of the trial court by failing to reimburse her for various household bills, as well as medical and dental bills for R.C., Anna once again offers no support for her argument. *See* Ind. App. R. 46(A)(8). However, we advise "it is within the inherent power of the trial court to fashion an appropriate punishment for the disobedience of the [trial] court's order." *See Deckard v. Deckard*, 841 N.E.2d 194, 203 (Ind. Ct. App. 2006) (quoting *Williamson v. Creamer*, 722 N.E.2d 863, 867 (Ind. Ct. App. 2000)). Thus, filing a civil contempt action with the trial court is a more appropriate way to coerce Robert to comply with the trial court's orders, if he in fact has not complied with them to date. *See Deckard*, 841 N.E.2d at 203.

CONCLUSION

Based on the foregoing, we conclude that the record in this case supports the trial court's findings and judgment in the Decree, except for its order as to spousal maintenance for Anna. On that issue alone, we remand with instructions for the trial court to re-evaluate Anna's award of spousal maintenance while considering her lengthy absence from the workforce and her time spent caring for R.C.

Affirmed in part, reversed in part, and remanded.

BAILEY, J., and MAY, J., concur.